

# *The E-rate Program*

## Road to Success

Fall 2011 Applicant Trainings

## Overview

- Know Your Role
- Technology Plans
- Competitive Bidding
- FCC Forms 470 and RFPs
- Vendor Selection
- Pre-Commitment “Must Knows”
- Post Commitment “Must Knows”
- Tips for Success

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# **Know Your Role**

- **Applicants**

- Write tech plan (Priority 2 services only), file FCC Form 470 and write RFP, evaluate bids, select provider, document the competitive bidding process, file FCC Form 471 & Item 21 attachment, get tech plan approved, file FCC Form 486, ensure CIPA compliance, select invoice method, file BEARs, retain docs

- **Service Providers**

- Respond to 470/RFPs, assist with preparing Item 21 attachments, provide technical answers to questions regarding specific goods and services requested but NOT on competitive bidding or tech planning; file SPIs and/or approve BEARs, file SPAC, retain docs

- **Consultants**

- Follow the role of their client(s) – either applicant or service provider, obtain a consultant registration number, retain docs

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# **Tech Plans**

## Pre-commitment Requirements

- IC and BMIC **ONLY** (Priority 2) require a tech plan starting with FY2011
- Tech plan should not cover more than 3 years
- Created by schools or libraries
- Should cover the funding year (July 1 – June 30)
- Sufficient detail to support & validate services requested
- Must follow FCC rules **AND** applicable state or local technology plan requirements
- Created prior to FCC Form 470/RFP (month & year)
- Contains four elements (goals/strategy, professional development, needs assessment, and evaluation process)

## Post-commitment Requirements

- Approved by a [USAC-certified Tech Plan Approver](#) (TPA) before FCC Form 486 is filed or services start, whichever is sooner

## Document Retention Requirements

- Draft tech plan and final, approved version
- Tech plan approval letter

**Note:** FY2010 and prior FCC Form 471 applications require approved tech plans for Priority 1 services, excluding basic telecom and VoIP

## Tech Plan Revisions

- **Not** needed prior to posting FCC Form 470 , if an existing approved tech plan is in place which covers a portion of the upcoming funding year
- **Not** needed prior to posting FCC Form 470 if using a state FCC Form 470
- **Needed** prior to posting FCC Form 470 , if services are not addressed in the existing tech plan

Remember: an approved tech plan is **required** when filing a FCC Form 486 or when services start



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# Competitive Bidding

## Competitive Bidding

- Must be **fair and open** process
- Avoid conflicts of interest (know your role)
  - Applicant consultant ⇔ Service Provider
  - Applicant ⇔ Service Provider
- Follow all rules – FCC **and** state/local

## Service providers **CANNOT**:

- Determine the types of service the applicant will seek on a FCC Form 470/RFP
- Prepare, assist applicants with filling out the FCC Form 470/RFP
- Sign, certify and/or submit FCC Form 470
- Assist or run the competitive bidding process for the applicant, which includes preparing or conducting the bid evaluation and selection process.

## Service providers **CANNOT**:

- Be privy to information about the bid not shared with other potential bidders
- Violate gifts rules

## Service providers **CAN**:

- Ask clarifying questions when bids or descriptions are vague or generic

## Applicants CANNOT:

- Have a relationship with service providers that would **unfairly influence** the outcome of the competition
- Furnish service providers with inside competitive information
- Have ownership interest in a service provider's company competing for services
- Violate applicant's own regulations or policies
- Violate gifts rules

## Applicants can:

- Have pre-bidding discussions with potential bidders as long as that doesn't lead to one bidder having "inside" information
- Attend product demonstrations
- Encourage and seek vendors to bid
- Do research to determine what cost-effective solutions are available

## ESAs (Educational Service Agencies)

- If Applicant and Service Provider are the same entity
  - Must demonstrate functional separation (e.g., organizational chart, budget codes, etc.)
  - Same individual or office within the ESA **CANNOT** conduct the competitive bidding or vendor selection and also provide the service
  - ESAs **CANNOT** “double dip”
    - Receive discounts on the **same** discounted service they sell (e.g., webhosting, Digital Transmission Services)

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# **FCC Form 470 & RFPs**



## FCC Form 470

- Indicates services and categories of service which entities are seeking
- Must be based on tech plan (if applicable)
- Must be posted for at least 28 days
- Indicates if the applicant has issued or is planning to issue an RFP
- Indicates any special requirements and/or disqualification factors
- Indicates who will be receiving the services

## Requests for Proposals (RFP)

- FCC rules refer to RFPs generically but they may have a variety of names (Request for Quotes, Request for Bids)
- FCC rules do not require RFP but state and local procurement rules may
- Must be based on entity's tech plan (if applicable)
- Must be available to bidders for at least 28 days
  - Count 28 calendar days from the **later** of the two posted (470 and RFP)
- Retain a copy of the RFP, including evidence of publication date and any solicitation
- Indicate any special requirements and/or disqualification factors

## Tips for Success

- Applicants must ensure that they post for the correct category or categories of service (Non-allowable m&c correction. Must repost FCC Form 470)
- Sufficient detail in FCC Form 470
  - Cannot provide **generic descriptions** (e.g., “All eligible telecom services” or “Digital Transmission Services”)
  - Cannot provide **laundry lists** of products and services
- Addendums or changes to the RFP may require applicants to **re-start** the 28 day period when there is a significant change to the original scope of the procurement

## Tips for Success

- Third-party entities conducting competitive bidding
  - Non-state agencies that conduct the competitive bidding and contract negotiations on behalf of schools or libraries
    - (e.g., Joint Power Authorities)
  - Must have a Letter of Agency (LOA) from each school and/or library signed on or before the FCC Form 471 certification postmark date

## Imposing Restrictions

- Setting eligible services requirements
  - Applicants may require service providers to provide services that are compatible with one kind of system over another (e.g., Cisco compatible).
  - Applicants cannot state make and model on FCC Form 470 or RPF, but may state **equivalent make & model** (e.g., “IBM router 628 or similar functionality”)
  - Applicants should avoid using specific manufacturer’s name to request a service (e.g., **Don’t** use Kleenex, **use** tissue instead)

## Imposing Restrictions

- Disqualifying Bidders
  - Qualification/disqualification factors must be spelled out up front to all interested parties
  - Available to all in FCC Form 470 and/or RFP

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# Vendor Selection

## Bid Evaluation

- Vendor evaluation begins after 28-day waiting period
- Follow **your** vendor selection rules
- Price of the **eligible** goods and services must be primary factor overall (the most cost-effective)
  - [USAC sample evaluation](#) matrix available
- Other factors, including other price factors, can be considered as well but they cannot be weighted **equally or higher** than cost of the **eligible** goods and services



## Bid Evaluation

- Applicants may use a multi-tier vendor selection process when evaluating bids, but ultimately, **price must be the primary factor** in selecting a qualified vendor
- Technical capabilities, such as scope or quality of service, may be the first tier to assess the bid
  - This tier may be evaluated on a **pass-fail basis** or **scored numerically**, where a minimum score is required to advance to the next tier of the evaluation process.

## Selecting the Winning Bidder

- Solution must be cost-effective
- An existing contract can be used as a bid response to your posted FCC Form 470
  - Post 470, evaluate all bids & existing contract, memorialize your decision if existing contract is selected
- No bids or one bid (email yourself noting the fact)
- Retain all vendor selection documentation
  - Winning and losing bids, correspondences, memos, bid evaluation documents, etc.

## Free Services

- Can't use E-Rate to get free ineligible products and services
- Must deduct the value of the “free stuff,” discounts, trade-ins, etc., from the pre-discount amount in order get equal comparison between offerings
  - Cost allocation is **NOT** required when the product/service (e.g., “free” cell phones) is available to the public or a class of subscribers (not just E-Rate)
- A proportionate cost allocation is required between eligible and ineligible components.
- Cost of eligible goods and services cannot be inflated to cover the “free” ineligible products and services

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# **Contracts**

## Overview

- Contract must be signed and dated by the applicant prior to the FCC Form 471 certification postmark date
- Applicant must not sign a contract before the Allowable Contract Date (ACD)
- Service providers may sign before the ACD
- When state and/or local contract law doesn't require signature and/or date, the applicant will be given the opportunity to confirm this
- A purchase order may be considered a contract **ONLY** if your state considers it a contract

## Voluntary Contract Extensions/ Multi-Year Contracts

- Are allowable when contract extensions or multi-year term is stated in the original provision of the contract
- Applicants must file a new FCC Form 470 each funding year if the multi-year term or contract extensions are not stated in the contract, RFP or the FCC Form 470.
- Applicants must file a new FCC Form 471 each year of the multi-year contract or contract extension
- File a FCC Form 500 to adjust the contract expiration date. (Note: this doesn't extend the service delivery deadline)

## State Master Contracts

- Competitively bid and put in place by a state government for use by multiple entities in that state
- **Single winner:** Single vendor wins the bid
- **Multiple winners:** State awards contract to several bidders
- **Multiple Award Schedule (MAS):** State awards contract for same goods and services to multiple vendors that can serve the same population

## State Master Contracts

- Only applies to state agencies, state procurement
- Multiple winners require vendor selection justification
  - In other words, if multiple vendors can provide the services to you, then you must conduct a **mini-bid**. A mini-bid evaluates the multiple winners services and compare them using your evaluation factors with price of the eligible goods and services being the primary factor. Document the vendor selection.
  - Applicants are not required to post a FCC Form 470 for the mini-bid
- FCC Form 471 Contract Award Date = Date you decided to purchase off State Contract (Note: This date may not be the same date the state awarded the contract)



## State Master Contracts

- If the contract expires either before the funding year starts or during the funding year, you may be able cite a [State Replacement Contract](#) (SRC) on FRNs
- FCC Form 470/Contract requirements:
  - Existing State Master Contract signed pursuant to a FCC Form 470 filed by the state
  - Replacement State Master Contract pursuant to a FCC Form 470 filed by the state
- See guidance on USAC's website for more information

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# **Pre-Commitment “Must Knows”**

# Must Know: Pre-Commitment

## Item 21 Attachment

- Item 21 attachment describes the eligible products or services requested for each FRN
- It is a FCC Form 471 window filing requirement. It should be submitted on or before the window close.
- Can be submitted via [Online tool](#), mail, fax or email to USAC
  - Remember to click SUBMIT when using Online tool

## Tip for Success

- Clearly label the Item 21 attachment (Applicant name, BEN#, FRN, Page #, Application #)

# Must Know: Pre-Commitment

## Paying Non-Discount Share

- Applicants always have to pay 10% or more
- Service providers cannot give money to pay for the non-discount share

## Budget Review

- Applicants show they can fund their share
- Operating budget (or draft) has dates that cover the FY
- Budget documentation should clearly identify applicant's share (e.g., expense line item)
- Can provide letter for reasonable expectation that funds will be secured by 7/1 of the funding year

# Must Know: Pre-Commitment

## Necessary Resources

- Are there end user computers?
  - Must have reasonable plans to fully utilize all internal connections for which you are requesting discounts
- Do you have software to run on the computers?
- Is your staff trained on how to use the technology?
- Do you have sufficient electrical capacity?
- Can you maintain the eligible and ineligible equipment?

# Must Know: Pre-Commitment

## **Certifications:** Applicants certify that they...

- Have secured access to necessary resources
- Have complied with all FCC, state and local competitive bidding and procurement regulations
- Non-discount portion of the costs for eligible services will not be paid by the service provider
- No kickbacks were paid to anyone
- Failure to comply with rules could result in prosecution
- Persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the program are subject to suspension and debarment

# Must Know: Pre-Commitment

## **Certifications:** Service Providers certify that...

- Services billed to customers on behalf of eligible entities and for eligible services, and exclude charges already invoiced
- SPs, if asked, must provide detailed cost breakouts of services to applicants
- They may be audited
- Prices were arrived at independently, without communicating with other bidders regarding pricing, intent to bid and how they determined their pricing
- Their prices won't be disclosed to another bidder before the bid opening

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# **Post-Commitment “Must Knows”**



# Must Know: Post-Commitment

## CIPA Compliance

- Proof of public notice and public meeting or hearing
- Copy of Internet Safety Policy
- Technology protection measure (filter)
  - Filter documentation examples: maintenance logs, filtering logs, vendor filter information on vendor invoices
- Applicants must be CIPA compliant when receiving Internet access in the Telecom Service category

## Tips for Success

- Maintain prior years' documentation if it supports current FY
- Refer to CIPA presentation for more information

# Must Know: Post-Commitment

## Invoice Review

- SP/Applicant must review BEAR/SPI to ensure:
  - Only eligible services are being billed and eligible entities are receiving service
  - Only services that were approved on the FCC Form 471 are being billed
  - Any service interruptions are accounted for
- Credits or discounts are apportioned to both USAC and the applicant
- Recurring services can only be delivered within the FY
- “Lighting” dark fiber date is reviewed

# Must Know: Post-Commitment

## Deferred Payment Plans Not Allowed

- Applicants are required to pay their share at the same time that USAC pays the discount amount
- Service Providers certify that the invoices they submit are for services that “have been billed to service provider’s customers”
- Deferred payment plans that allow the applicant to pay after USAC has paid will jeopardize a funding request
- FCC rules include a presumption that the non-discount share will be paid within 90 days

# Must Know: Post-Commitment

## Service Delivery

- Service providers & applicants should work together to facilitate delivery of service
- Monitoring receipt of service
  - Should monitor delivery of service
  - Keep documentation of service delivery and any service interruptions
  - Applicants get Quarterly Disbursement Report
- Non-recurring services deadline is September 30 following the close of the funding year
- Applicants may request a service delivery extension from USAC for non-recurring services

# Must Know: Post-Commitment

## Operational SPIN Changes

- Only occur during post-commitment
- Corrective SPIN changes may occur pre-commit (data entry errors, acquisitions or mergers)
- Starting with FY 2011 FRNs, Operational SPIN change requests can be **approved** when there is a legitimate reason to change providers (e.g., breach of contract or the service provider is unable to perform)
- Operational SPIN changes **cannot be approved**
  - to purchase a service or product for a cheaper price or
  - because of preference for a bidder that didn't participate in or win the competitive bidding process

# Must Know: Post-Commitment

## Operational SPIN Changes cont'd

### Operational SPIN Change Request

- The newly selected vendor must receive the next highest point value in the **original bid evaluation** if more than one vendor submitted a bid
- You can select a vendor without conducting another competitive bid if only **one bid** was received
- You must state your reason for the request
- Indicate the new SPIN start date and funding amount and the former SPIN end date and funding amount

# Must Know: Post-Commitment

## Entity Closing & Openings

- During PIA review
  - Alert your reviewer of the entity change immediately. Provide the closing date
  - Inform the reviewer about changes in student count, discount, entity name & address, service requested
- Post-commitment
  - Submit Block 4 changes to USAC [Appeals](#)
  - Alert Client Service Bureau ( to provide closing date, obtain new entity numbers, entity name & address change)

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# Document Retention



## Retain Documents to Show Compliance

- 5 years from **last date to receive service** in electronic format or paper
- Any document from a **prior year** that supports current year must be kept until 5 years from last date to receive service as well
  - E.g., Contract from 2005, used to support FY 2012 recurring service FRNs, must be kept until at least **June 30, 2018**
- Applicants & service providers must retain **ALL** documentation that shows compliance with all FCC rules.

## Retain Documents to Show Compliance

- Consultant authorization such as Letter of Agency
  - Are not required for PIA review if the consultant contact information is on the FCC Form 471

## Document Examples

- Consortium Letters of Agency or contracts with the consortium leader
- Compliance review documents (PIA, TPA, CIPA, Invoice)
- Invoices, bills, contracts
- Asset registries, inventory logs
- Also, see further list on USAC website

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**Questions?**

# Thank you!